

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES CARLISLE,

ANSWER

Plaintiff,

07 CV 6350 (JSR)

-against-

Jury Trial Demanded

THE CITY OF NEW YORK, POLICE COMMISSIONER
RAYMOND KELLY, DEPUTY INSPECTOR JOHN
BAMBURY, POLICE OFFICER EDGARD CALDERON,
TAX ID#[], POLICE OFFICER WALDO CUBA,
SHIELD # 917482, POLICE OFFICER WILLIAM REED,
SHIELD #10670,

Defendants.

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Defendants, the City of New York, Commissioner Raymond Kelly, Deputy Inspector John Bambury, Police Officers Edgard Calderon, Waldo Cuba, and William Reed, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to proceed as stated therein.

2. Deny the allegations set forth in paragraph "2" of the complaint, except admit that plaintiff purports to proceed as stated therein.

3. Deny the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff purports to bring this action and seek the relief as stated therein.

4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purport to invoke the Court's jurisdiction as stated therein.

5. Deny the allegations set forth in paragraph "5" of the complaint.

6. Deny the allegations set forth in paragraph "6" of the complaint, except admit that plaintiff purports to base venue as stated therein.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint.

8. Admit the allegations set forth in paragraph "8" of the complaint.

9. Deny the allegations set forth in paragraph "9" of the complaint, except admit that Raymond Kelly is the current Commissioner of the New York City Police Department and that plaintiff purports to sue Commissioner Kelly in his individual and official capacities.

10. Deny the allegations set forth in paragraph "10" of the complaint, except admit that John Bambury is a Deputy Inspector and that plaintiff purports to sue Deputy Inspector Bambury in his individual and official capacities.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the unidentified defendants, and admit that Commissioner Kelly, Deputy Inspector Bambury, and Police Officers Calderon, Cuba, and William Reed are currently employed with the NYPD, and that plaintiff purports to sue these individuals in their individual capacities.

12. The allegations set forth in paragraph "12" of the complaint constitute legal conclusions rather than averments of fact to which no response is required.

13. Deny the allegations set forth in paragraph "13" of the complaint.

14. Deny the allegations set forth in paragraph "14" of the complaint.

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Deny the allegations set forth in paragraph "16" of the complaint.

17. Deny the allegations set forth in paragraph "17" of the complaint and all subparts thereto.

18. In response to the allegations set forth in paragraph "18" of the complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint.

21. In response to the allegations set forth in paragraph "21" of the complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint.

25. Deny the allegations set forth in paragraph "25" of the complaint.

26. Deny the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph "27" of the complaint.

28. Deny the allegations set forth in paragraph "28" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

29. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

30. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

31. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties, and was not the proximate result of any act of the defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

32. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant City's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

33. Plaintiff cannot obtain punitive damages as against the City of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims may be barred, in whole or in part, by the applicable statute of limitations period.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

35. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

37. Plaintiff's claims may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

38. Commissioner Raymond Kelly, Deputy Inspector John Bambury and Police Officer William Reed had no personal involvement in allegations alleged in the complaint.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

39. Defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

40. Plaintiff provoked any incident.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

41. The actions of any police officers involved were reasonable and justified by probable cause.

WHEREFORE, the City of New York, Commissioner Raymond Kelly, Deputy Inspector John Bambury, Police Officers Edgard Calderon, Waldo Cuba, and William Reed request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 25, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
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New York, New York 10007
(212) 788-0971

By: _____ /s/
Anna Nguyen
Assistant Corporation Counsel
Special Federal Litigation Division

TO: BY ECF
Nicole Bellina, Esq.
Attorney for Plaintiff
71 Nevins Street
Brooklyn, New York 11217

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Defendants.

ANSWER

MICHAEL A. CARDODOZO
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Attorney for Defendants
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New York, N.Y. 10007

Of Counsel: Anna Nguyen
Tel: (212) 788-0971
NYCLIS No.

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for.....